

OCT 14 2005

Doc Code: AP.PRE.REQ

PTO/SB/93 (07-05)

Approved for use through 10/01/2000. OMB 0651-00XX
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

10990443-1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on Oct 14 2005Signature Carrie McKerleyTyped or printed name Carrie McKerley

Application Number

09/678,573

Filed

Oct 3, 2000

First Named Inventor

Adrian Pell

Art Unit

2134

Examiner

Jacob Lipman

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/93) attorney or agent of record.Registration number 40,709


Signature

Philip S. Lyren

Typed or printed name

281-514-8236

Telephone number

 attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Oct 14, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

OCT 14 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Adrian Pell	Examiner:	Jacob Lipman
Serial No.:	09/678,573	Group Art Unit:	2134
Filed:	October 3, 2000	Docket No.:	10990443-1
Title:	Methods and Systems for Customer Premises Remote Collaboration Facility		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified patent application. Applicant presents three separate issues (I – III) below for review.

ISSUE I: Entry of Claim Amendments

In response to the first Office Action (dated 1/21/2005), no claim amendments were made. In the Final Office Action (dated 7/14/2005), the Examiner issued several new rejections under 35 USC § 112 for insufficient antecedent basis. These rejections were neither made in the first Office Action nor made in response to any previous amendments.

Applicant amended the claims merely to cure the newly issued section 112 rejections. The amendments were made per 37 CFR 1.116(b) to reduce the number of disputes and place the application in a better form for appeal. The Examiner refused to enter the amendments. Applicant requests entry of these amendments.

ISSUE II: Claim Rejections: 35 USC § 112

Claims 1 and 11 are rejected under 35 USC § 112, second paragraph, as being indefinite. The Office Action contends that "Applicant has not claimed a firewall. Applicant has chosen to leave the claim vague as to whether a firewall is present" (FOA at p. 5). Applicant respectfully disagrees.

The claim limitation "regardless of the presence of firewall protection" is not vague. According to MPEP § 2111.01, words in a claim are given their ordinary and customary meaning

Serial No.: 09/678,573
Pre-Appeal Brief

as given to the term of those of ordinary skill in the art. The term "regardless" has a known meaning to one of ordinary skill in the art. For example, Merriam-Webster online diction (www.m-w.com) defines "regardless of" as follows:

without taking into account <accepts all *regardless of age*>; also : in spite of <*regardless of our mistakes*>.

In light of this definition and Applicant's specification (which supports the claim recitation), one of ordinary skill in the art can determine the meaning of the term "regardless of" in the pending claims (see specification at p. 6, line 21 - 7, line 2).

Further, the Applicant can define the claims essentially in whatever terms he chooses, so long as the terms are not used in ways that are contrary to the accepted meanings in the art, see MPEP § 2173.01. The Applicant may use any style of expression or format that makes clear the boundaries of the subject matter for which protection is sought, see *Id*. In light of Applicant's specification and a common dictionary, one of ordinary skill in the art can understand the claims.

ISSUE III: Claim Rejections: 35 USC § 102

Claims 1 – 9 and 11 – 19 are rejected under 35 U.S.C. §102(a) as being anticipated by USPN 6,052,531 (Waldin). Applicant disagrees with this rejection since Waldin does not teach each element in the claims. Examples are provided for independent claims 1 and 11.

Independent claim 1 recites "a requesting system coupled to the Internet from which a user requests assistance from a support representative wherein said user utilizes a standard Web browser client to request said assistance" (emphasis added). The Office Action cites Waldin at col. 4, lines 1 – 12 for teaching these recitations. This section is reproduced below for convenience:

Referring to FIG. 1, a virus protection software application 110 which incorporates a number of virus detecting routines 112, and utilizes a number of data files containing virus information 114, is installed on a user's computer 116. Because of the rate at which new viruses are created, it is desirable to update the virus protection software applications on the user's computer frequently. These updates could take place as often as daily, or even more frequently if desired. Generally, these updated applications 110 will include only small changes to the data files 114, but sometimes larger changes to the virus detecting routines 112 will also be included.

Serial No.: 09/678,573
Pre-Appeal Brief

Nowhere, for example, does this section of Waldin teach or suggest that a user requests assistance from a support representative. Further, nowhere does this section of Waldin teach or suggest that a user utilizes a standard Web browser client to request the assistance. In fact, nowhere does Waldin even discuss browsers or users utilizing browsers to request assistance.

In response to Applicant's argument, the Office Action contends that "Waldin discloses that a user's virus protection software is updated. An update is a request from a user from a support representative." For several reasons, Applicant respectfully disagrees. First, claim 1 recites that a user utilizes the Web browser to request assistance from a support representative. Waldin is directed to distributing incremental patches to update virus protection software to users. Nowhere does Waldin teach or suggest that a user uses a web browser to request "assistance from a support representative." Second, claim 1 recites that a "user" uses the browser to make a request for assistance. Waldin does not mention anywhere that users make requests for assistance from a support representative. By contrast, Waldin explicitly teaches that a program on the user's computer retrieves update software patches: "The updater program 126 determines what patch files 122 are necessary, retrieves them and applies them to the application to be updated 110" (col. 4, lines 38-40).

As yet another example, claim 1 recites "a support representative system coupled to the Internet from which a support representative responds to the requesting user to provide assistance" (emphasis added). The Office Action cites Waldin at col. 4, lines 17 - 24 for teaching these recitations. This section is reproduced below for convenience:

Each time an updated software application 110 is produced by the virus protection software publisher, the updated form of the software application constitutes a new version. The software publisher uses an incremental update builder, such as binary patch file builder 120, to produce at least one incremental update, such as binary patch file 122, which can transform a previous version of the software application to the current version.

Nowhere, for example, does this section of Waldin teach or suggest that the support representative system responds to the requesting user to provide assistance. As noted above, the user in Waldin does not make a request. Instead, an updater program in the user's computer

Serial No.: 09/678,573
Pro-Appeal Brief

determines what patch files are necessary and retrieves them (see col. 4, lines 38-40). So, a "user" never makes a request in Waldin. Further, claim 1 recites that the user requests "assistance." Requests for assistance are not taught or suggested in Waldin. Instead, Waldin teaches methods and apparatus for distributing software update patches.

As still yet another example, claim 1 recites "a collaboration server system ... for receiving a request for assistance and for processing said request for assistance" (emphasis added). The Office Action cites Waldin at col. 8, lines 28 – 57 for teaching these recitations. Applicant scrutinized this section. Nowhere does this section teach or suggest that the collaboration server system is for receiving a request for assistance and for processing the request for assistance. This section of Waldin does not even mention receiving requests for assistance. In Waldin, requests for assistance are never made. Instead, Waldin teaches that an updater program in the user's computer determines what patch files are necessary and retrieves them (see col. 4, lines 38-40).

In response to Applicant's argument, the Office Action contends that "Waldin discloses the representative sends the update (column 4 lines 35-40)." For several reasons, Applicant respectfully disagrees. First, column 4, lines 35-40 of Waldin teach that an updater program in the user's computer determines what patch files are necessary and retrieves them. Notice that this section of Waldin does not teach or suggest receiving a "request for assistance." Instead, a program in the user's computer retrieves patch files from a server ("The binary patch files 122 are stored on an update data source 124 (a server) which makes the patch files available to an updater program 126." See col. 4, lines 35-38).

For at least these reasons, claim 1 is allowable over Waldin. The dependent claims are allowable for at least the reasons given in connection with claim 1.

Independent claim 11 recites "a rendezvous service, responsive to receipt of a request for assistance generated by a Web browser client operating on said requesting system" (emphasis added). Nowhere does Waldin teach or suggest a service that is responsive to receipt of a request for assistance generated by a Web browser client. In fact, Waldin does not teach or suggest the use of a browser as claimed. The Office Action cites several sections of Waldin (namely, col. 4, lines 1 – 12, 17 – 24 and col. 8, lines 28 – 57). None of these sections disclose or suggest a service that is responsive to receipt of a request for assistance.

Serial No.: 09/678,573
Pre-Appeal Brief

FIG. 1 of Waldin shows a user computer 116 coupled to a server 124 and software publisher 118. Waldin does not teach or suggest that either the server 124 or the software publisher 118 receives a request for assistance from a web browser. Requests for assistance are not mentioned in Waldin. Instead, Waldin teaches a program in the user's computer retrieves patch files from a server. "The binary patch files 122 are stored on an update data source 124 (a server) which makes the patch files available to an updater program 126" (see col. 4, lines 35-38).

As another example, claim 11 recites "a rendezvous service ... to initiate communications via the Internet between said requesting system and said support representative system regardless of the presence of firewall protection in said requesting system" (emphasis added). Waldin does not even discuss firewall protection. Nowhere does Waldin teach or suggest a rendezvous service that initiates communication between two systems regardless of firewall protection.

For at least these reasons, claim 11 is allowable over Waldin. The dependent claims are allowable for at least the reasons given in connection with claim 11.

For at least these reasons, Applicant requests withdrawal of the final rejection.

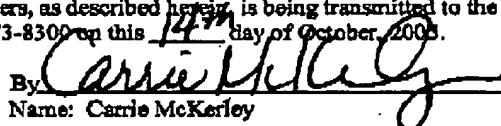
Respectfully submitted,



Philip S. Lyren
Reg. No. 40,709
Ph: 281-514-8236

CERTIFICATE UNDER 37 C.F.R. 1.8

The undersigned hereby certifies that this paper or papers, as described herein, is being transmitted to the United States Patent and Trademark Office facsimile number 571-273-8300 on this 14th day of October, 2005.

By 
Name: Carrie McKerley